

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STEVE ELLIS,
Plaintiff

vs.

KROGER TEXAS, LP., d/b/a
KROGER,
Defendant.

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CIVIL ACTION NO:

DEFENDANT KROGER TEXAS L.P.’S NOTICE OF REMOVAL

Defendant Kroger Texas L.P. (“Defendant” or “Kroger”), incorrectly named as Kroger Texas, L.P., d/b/a Kroger, removes Cause No. 2022-18301 from the 151st Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division, pursuant to 28 U.S.C. § 1441(b).

I. STATE COURT ACTION

1. The above-styled cause was initially brought in the 151st Judicial District Court of Harris County, Texas. The state court action is styled *Steve Ellis v. Kroger Texas L.P., d/b/a/ Kroger*, Cause No. 2022-18301. *See* Exhibit A, Plaintiff’s Original Petition (“Original Petition”).

II. PARTIES

2. According to his Original Petition, Plaintiff Steve Ellis (“Plaintiff” or “Ellis”) is a citizen of Harris County, Texas. *See* Exhibit A.

3. Defendant Kroger Texas L.P. is an Ohio limited partnership having its principal place of business in the State of Ohio. The general partner of Kroger Texas L.P. is KRGP Inc., an Ohio corporation with its principal place of business in Cincinnati, Ohio. The limited partner of Kroger Texas L.P. is KRLP Inc., also an Ohio corporation with its principal place of business

in Cincinnati, Ohio. The citizenship of a limited partnership is determined by the citizenship of each partner, both general and limited.¹ Accordingly, since Kroger Texas L.P. is made up of corporations which are incorporated and headquartered in Ohio, Kroger Texas L.P. is a citizen of Ohio for purposes of diversity jurisdiction.

III. JURISDICTION

4. This Court has jurisdiction over the pending action, pursuant to 28 U.S.C. § 1332, on the basis of diversity jurisdiction because the claims in this action are between citizens of different states and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

5. As set forth above, Ellis is a citizen of Texas and Kroger is a citizen of Ohio. Therefore, there is complete diversity between the parties in this action.

6. In his Original Petition, Ellis alleges that he “was a customer at the Kroger located at 14344 Memorial Drive, Houston, Texas 77079...While leading his sisters through the grocery store and into the frozen foods section, Mr. Ellis suddenly slipped and fell on the hard floor in front of a freezer.”² Ellis alleges that his fall resulted “in serious bodily injury.”³ Ellis has brought causes of action against Kroger for negligence, gross negligence, premises liability (alternatively), negligent hiring, supervision and training, negligent undertaking, and vicarious liability/ respondeat superior.⁴ Ellis is seeking actual damages for: pain and suffering in the past; pain and suffering in the future; mental anguish in the past; mental anguish in the future; past medical expenses; future medical expenses; physical impairment in the past; physical

¹ *Carden v. Arkoma Assoc.*, 494 U.S. 185, 195-196 (1990).

² Ex. A at ¶ 9.

³ *Id.*

⁴ *Id.* at ¶¶ 12-41.

impairment in the future; physical disfigurement in the past; physical disfigurement in the future; past loss of household services; future loss of household services; past loss of consortium; and future loss of consortium.⁵ Ellis is further seeking pre-judgment interest; post-judgment interest; exemplary damages; and other damages available under law (statutory or common law).”⁶

7. In his Original Petition, Ellis alleges his damages are more than \$1,000,000.00 but less than \$10,000,000.00.⁷ Based on the Original Petition, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

IV. TIMELINESS OF REMOVAL

8. Kroger was served on April 1, 2022⁸ and filed its Original Answer to Ellis’s Original Petition on April 13, 2022.⁹ Not more than thirty days have elapsed since Kroger was served with process. Pursuant to 28 U.S.C. § 1446, this Notice of Removal is timely and proper.

V. CONDITIONS PRECEDENT

9. Kroger has tendered the filing fee of \$400.00 to the Clerk of the United States District Court for the Southern District of Texas, Houston Division, along with the original Notice of Removal. A copy of this Notice of Removal is also being filed in the 151st Judicial District Court of Harris County, Texas,¹⁰ and counsel for Ellis is being provided with a copy of this Notice of Removal.

⁵ *Id.* at ¶ 45 (a)-(n).

⁶ *Id.* at ¶ 45 (o)-(r).

⁷ *Id.* at ¶ 45.

⁸ Ex. C.

⁹ Ex. B.

¹⁰ Ex. D.

10. By filing this Notice of Removal, Kroger does not waive any defenses, affirmative claims, counterclaims, or third-party claims that may be available, nor does Kroger admit that Ellis's claims exceed \$75,000.00, exclusive of interest and costs.

VI. EXHIBITS BEING FILED WITH THIS COURT

11. Accompanying this Notice of Removal are the following exhibits, which are being filed contemporaneously in this Court:

- Exhibit A: Plaintiff's Original Petition
- Exhibit B: Kroger Texas L.P.'s Original Answer to Plaintiff's Original Petition
- Exhibit C: Return of Service
- Exhibit D: Notice of Filing Notice of Removal to the 151st Judicial District Court of Harris County, Texas and Counsel for Plaintiff
- Exhibit E: State Court Docket Sheet

Because the claims in this action are between citizens of different states and the amount in controversy is in excess of \$75,000.00, exclusive of interest and costs, Kroger removes the above-captioned case from the 151st Judicial Court of Harris County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

BAKER • WOTRING LLP

/s/ Earnest W. Wotring

Earnest W. Wotring

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**ATTORNEYS FOR DEFENDANT
KROGER TEXAS L.P.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing instrument was served on the following through e-filing on April 29, 2022.

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/s/ Earnest W. Wotring

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